IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

:: **ORDER** ::

S.B. CIVIL WRIT PETITION NO.2027/2005-SITA RAM KACHHWAHA VS THE STATE OF RAJASTHAN & ORS.UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

DATE OF ORDER : 2.5.2005.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr.MC Bhoot, for the petitioner.
Mr.MR Singhvi, for the respondent.

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REPORTABLE

BY THE COURT:

Heard learned counsel for the parties.

Brief facts of the case are that according to petitioner,the licence for running a liquor shop was granted to the petitioner after careful examination of the location of the shop in dispute. According to petitioner earlier also liquor shop was running in this very shop. Now the District Collector on a complaint directed the Excise Officer, Jodhpur to re-consider the entire matter, but according to learned counsel for the petitioner,the Excise Officer vide order dated 1.4.2005

asked the petitioner to give alternate location for the liquor shop in zone no.4. Therefore, the petitioner has challenged the order of the Excise Officer dated 1.4.2005 (Annex.5). According to petitioner, the objection raised against the running of the liquor shop in the shop in dispute has been raised by some miscreants to blackmail the petitioner and the District Excise Officer without giving an opportunity of hearing to the petitioner and without giving opportunity to meet with the allegations levelled against the petitioner, passed the order virtually directing the petitioner to not to have the liquor shop in the shop in dispute, but somewhere else.

Learned counsel appearing the respondent-Excise Department pointed out that Section 53 of the Rajasthan Excise Act clearly provides that in case of apprehension of riot or unlawful assembly, the District Magistrate can pass orders of closure of the shop for which licence has been granted by the Excise Authority under the Rajasthan Excise Act. And as per condition no.4.2 of the licence under which the petitioner is claiming his right, there is specific provision, which provides that the District Excise Officer shall have power to change the place of liquor shop for which licence has been granted to the licensee. Learned counsel for the respondent Excise Department further submitted that even when there is a problem of law and order, the shop can be closed down and appropriate order for shifting the shop can be passed.

Learned counsel for the respondent Excise Department pointed out that the learned District Collector received a report from the SHO, Mandor, copy of which is placed on record alongwith Annex.R/1, wherein the SHO opined that looking to the location of the three schools in nearby area within 200, 300 and 400 meters and looking to the fact that there is a public water-tape within 25 feet distance from the shop and there is a public agitation on 1.4.2005 against the liquor shop which was by not only by male persons, but even by ladies and school children, the shop in question may be removed. According to learned counsel for the respondent-Excise Department, therefore, it cannot be said that the learned District Collector has committed any illegality in forwarding the complaint to the Excise Officer. It is also submitted that even the District Collector has rightly forwarded the matter to the Excise Officer instead of passing of the order himself in view of the condition no.4.2 and 4.10, which empowers the Excise Officer only to pass appropriate order for shifting the shop. It is also submitted that when there is a report of the SHO then it cannot be said that the ladies and the school children were also blackmailers. According to learned counsel for the respondent-Excise Department, the order has been passed by the Excise Officer well within his jurisdiction.

I considered the submissions of learned counsel for the parties

and perused the documents placed on record. There is no dispute that licence was granted to the petitioner for running the shop and there is no dispute that earlier the liquor shop was running at the same place. There is no dispute that some objections were raised by the public. There is a report of the SHO, which was submitted to the learned District Collector, Jodhpur and the learned District Collector himself has power under Section 53 to close down the shop, if a riot or unlawful assembly is apprehended or occurs in the vicinity of any shop. This also provides that such order may be for a particular period, which may be decided by the said learned Magistrate or even police officer, who passes the order of closure of the shop.

In view of the provisions contained in Section 53 it is clear that it is not necessary that riot or unlawful assembly must occur before passing order of the closure of the shop. The Authorities, the District Magistrate and even the Police Officers can on the basis of the apprehension only of riot or unlawful assembly, pass the order of closure of the shop. It is also true that sub-section (2) of Section 53 provides closure of the shop for a particular period. This does not mean that the authorities, if finds that there will be some untoward incidence and there will be problem of law and order, they will have to pass order of closure of the shop for a particular period and, thereafter, allow reopening of the shop, despite their satisfaction about likelihood of

untoward incidence because of opening of the liquor shop.

If the State Authorities think proper they may take interim steps under Section 53 of the Excise Act and may forward matter to the Excise officer who may pass appropriate order by exercising power under condition no.4.2 and 4.10 of the licence. In these circumstances, Section 53 if read in consonance with the condition no.4.2 and 4.10 of the terms of the licence, the matter could have been and therefore and has been rightly forwarded to the Excise officer for passing appropriate order by him under Condition no.4.2 and 4.10 to give relief to the public permanently.

In view of the above, the forwarding of the matter by the District Collector to the Excise Officer cannot be said to be illegal in any manner as the condition no.4.2 and 4.10 nowhere provides that the Excise Officer himself should initiate the proceedings of his own and cannot act on the information received from any source.

So far as riot and unlawful assembly are concerned, it is the State duty to maintain the law and order situtation and their action if are bonafide are final.

The next contention of learned counsel for the petitioner against

the order of the Excise Officer is that the Excise Officer has decided the matter and, therefore, directed the petitioner to submit for alternate location for running the liquor shop in zone no.4 and this order has been passed without affording opportunity of hearing to the petitioner and without determining the factual aspect of the matter about the allegations as mentioned in the report of the SHO.

The District Excise officer since has been given power under the condition of the licence itself to decide the matter about the alternate location even for a shop for which licence has been granted, therefore, for taking decision about the shop for liquor is within the jurisdiction of the District Excise officer and sanction for the location on earlier occasion or even for present is not relevant consideration. The grievance raised by the public after delay in such matter cannot be ground to deny the relief to the public. (Miscreants and blackmailer do not constitute public in this reference and context).

So far as facts relating to the existence of the various schools etc are concerned, those facts may be relating to the actual location of the shops and the schools relatively, but so far as the apprehension of riot and unlawful assembly are concerned, they can be well examined by the administration and for that purpose all the evidence,which is gathered by the administration are relevant evidence for the purpose of taking

the decision under clause 4.2 and 4.10 of the licence condition and the Excise Office can pass appropriate order if the reports from the administration and or law enforcing agency are received.

Since the Excise Officer vide impugned order dated 1.4.2005 directed the petitioner to submit the proposal for alternate location and the District Excise Officer has not passed the order of closing down the shop permanently or of shifting of the shop under clause 4.2 and 4.10, therefore,the petitioner may approach the District Excise officer, Jodhpur,who may hold a brief enquiry and may decide the issue whether the shop should be shifted from the place for which the licence has been granted by the Excise Department on the basis of the allegations of its location nearer to the schools and water-tape and it being nearer to the public place of cattle water-drinking place etc and also look into the informations, which have been forwarded to the Excise Officer relating to the law and order situation and that may also be a relevant consideration for passing the order of removal of the shop from a place where the sanction has been granted for opening the shop even after verification of all the facts and even when the shop is not falling within the prohibited zone of para-meters as given in the Excise Act or the Rules thereunder in view of the specific statutory provision under Section 53 of the Excise Act, which makes a ground for closure of the liquor shop for which the licence has been granted by the Excise

Authorities and in view of the fact that Section 53 cannot be read to be mean that the District Collector will pass the order of closure of the shop for a particular period and, thereafter, they will invite riot and unlawful assembly to take place and,thereafter, they will pass again an order of closure of the shop again that too, for short period only. In case, the situation arises, which is bonafide then the District Collector can certainly provide information to the Excise officer so that he may pass appropriate order under clause 4.2 and 4.10.

In view of the above, the writ petition of the petitioner is partly allowed to the extent that the Excise officer shall pass an appropriate order after hearing the petitioner under clause 4.2 and 4.10 of the condition of licence after taking note of the entire facts of the case in the light of the observations made above. The petitioner shall appear before the Excise Officer, Jodhpur on 3.5.2005, the date which has been suggested by both the counsel. The District Excise Officer, Jodhpur may pass the appropriate order within two days thereafter as agreed by both the parties.

(Prakash Tatia), J.

c.p.goyal/-